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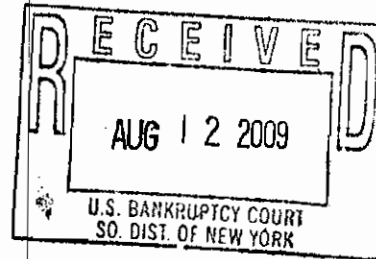
AMENDED 8/9/2009

UNITED STATES BANKRUPTCY
COURT

SOUTHERN DISTRICT OF NEW
YORK

In re

GENERAL MOTORS CORP., ET
AL., DEBTORS



DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Items are: Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y,
Z Z 1, Z 2, Z 3, Z 4, Z 5, Z 6, Z 7, Z 8, Z 9, Z 10, Z 11, Z 12, Z 13, Z 14, Z 15, Z 16, Z
17, Z 18, Z Z 19, Z 20, Z 21, Z 23, Z 24, Z 25

Exhibit: I Title 29 Subtitle D 1369
Exhibit: J Title 29 Subtitle D 1362
Exhibit: K Title 29 Subtitle D 1363
Exhibit: L Title 29 Subtitle D 1364
Exhibit: M Title 29 Subtitle B part2 1054
Exhibit: N Congress repeals Glass-Steagall Act in 1999 pg 1 para4
Exhibit: Q Traditional Company Pensions pension payment proof statement off new
Exhibit: R GM website Inspector General fired
Exhibit: S Title 29 Subtitle D 1368
Exhibit: T Historic economic downturn
Exhibit: U Youngstown Sheet & Tube Co., 343 U.S. 579, 585, (1952)
Exhibit: V Leocal v Ashcroft 543 U.S. 1, 12 (2004)
Exhibit: W sale approved
Exhibit: X Cuomo breaks out A1G bonus list
Exhibit: Y Chicago Times pg2 para3, 4
Exhibit: Z 1 PBGC release 202-326-4343 PBGC to assume Delphi pensions
Exhibit: Z 2 PBGC: pension safe up to certain limits
Exhibit: Z 3 PBGC facing probe pgl para24 starting: "the PBGC is broke", pg3
Exhibit: Z 4 Brooking: could be a 2nd bankruptcy pg2 para5
Exhibit: Z 5 Fed of Dallas pg3 para4 & charts
Exhibit: Z 6 chartspgl,pg2,pg3
Exhibit: Z 7 Hearing before the H. Comm. on Fin. servs., Declaration of Todd
Exhibit: Z 8 A.Gluckman in support of the Motion to Withdraw the reference
Exhibit: Z 9 ("Gluckman decl.")
Exhibit: Z 10 White House limiting UAW pay \$13.4 billion pgl para4
City o/New York v. Exxon Corp. 932 F. 2d 1020, 1026 2d Cir. 1991
Troubled Asset Relief Program pg 1 par 4, pg5 para5
Exhibit: Z 11 Where bank Tarp money went all, esp. pg4 para3, starting:
Exhibit: Z 12 The bailout money "doesn't have its own bucket"
Exhibit: Z 16 Elizabeth Warren pg3 para 3 "I don't have a badge and a gun" part
Exhibit: Z 17 1 balance of trade
part 2 trade deficits and fallacy of composition
Exhibit: Z 18 *Marbury v. Madison 5 Us. (1 Cranch) 137 (1803)*
Exhibit: Z 19 Treasury's Bailout Proposal
Obama Auto Advisor tells Lawmakers Emergency
Exhibit: Z 20 Economic Stabilization Act of 2008 Written
Exhibit: Z 21 Opinion July 5, 2009 Judge Gerber part 1- list of
Exhibit: Z 22 foreign banks
Exhibit: Z 23 part 2-A1G bailout counterparties
Exhibit: Z 24
Exhibit: Z 25

TARP codified at 12 U.S.C. 5201, and the use of these funds by the Executive Branch and the U.S. Treasury was instrumental in the 363 transaction. The Purchaser, the U.S. Treasury, demanded that "OLD" GM be sold off, and that New GM will not take over my pension liability, as it does with the UA W, this is my injury.

I make reference to the Opinion of Judge Robert E. Gerber dated July 5, 2009

On pg 68 he states: *"(But as a practical matter, Old OM will be liquidating, and it will not be able to keep making these payments very much longer. After that, even if Old OM makes a proposal in good faith (as the Court assumes it will), the Splinter Union retirees may well be left with unsecured claims, with relatively low recoveries on their unsecured claims, that all other unsecured creditors will receive, and with the delays in getting distributions on allowed claims that are an unfortunate reality of the bankruptcy process.)"* Throughout this Appeal, if I highlight a point in this opinion I will give the page number [pg and italicize the quote in brackets.] The quote above by Judge Gerber relates to President Obama's quote below in which he states of: [pg 12 *"using the existing legal structure as a tool"*] This is the U.S. government stating they will use the law to take away pensions, of many thousands of retirees. This is astonishing, the U.S. President using legal "tools" against its own citizens. The Executive Branch, which, under the U.S. Constitution, can not make Law, the Presidents duties under Article II Section 3 are "he shall take care that the Laws be faithfully executed." President Obama is not faithfully executing the Law, under the requirements of U.S. Constitution, he is manipulating by forcing a company into a 363 Transaction so as to tear away pension payments of tens of thousands of citizens, and reduce work rules and wages of U.S. workers, so as to comply with: free trade ideals. The Executive Branch is clearly Free Traders, and will stop at nothing to execute this Free Trade at precious cost of the U.S. Constitution, and sovereignty of United States. This act by the Executive Branch is a severe violation of the Separation of Powers and encroachment by the Executive Branch on the Legislative Branch, and other constitutional violations. The Judicial under the Constitution, has taken a Constitutional oath, to stop such severe violations and acts attacking the U.S. Constitution. These acts by the Executive Branch do not just affect the workers, in this case but all citizens of the United States.

U.S. Treasury first extended credit to GM, there was absolutely no other source of financing available. No party other than Treasury conveyed its willingness to loan funds to GM and thereby enable it to continue operating. pg9, At the time this loan was made, GM was in very weak financial condition, and the loan was made under much better terms than could be obtained from any commercial lender-if any lender could have been found at all. pg 14, Importantly, the DIP financing to be furnished by the U.S. Treasury and EDC is the only financing that is available to GM. (also) Other efforts to obtain such financing have been unsuccessful. pg15, In accordance with standard section 363 practice, the 363 Transaction was subject to higher and better offers, but none were forthcoming. The Court finds this hardly surprising. (also) Only the U.S. and Canadian Governmental authorities were prepared to invest in GM, (also) and the only entity that has stepped forward to make such a purchase-is the US. Treasury sponsored Purchaser.} Any argument to the contrary would at best be disingenuous. The U.S. Treasury setup this 363 Transaction, December 31, 2008, using TARP money, and no one else. Then the U.S. Treasury was allowed, under Bankruptcy Law, to use the Law as a tool, to tear away the collateral of my pension in its demand, of the sale of Old GM and its refusal to comply with section 1114. [pg68, New GM has not agreed to assume liability for the Splinter Union Retiree Benefits. 119 It declined to do so, pg71, the Purchaser is not volunteering to comply with section 1114,]

These retirees and workers have family's, they are in many cases veterans, volunteers to community efforts, and are taxpaying U.S. citizens. But Government actions against them in this sale appear to be. Myself, and these other retirees, and workers, are the victims, of the Executive Branch this time, who will be next? In our GM plant alone well over 8,000, who worked over thirty years, in a non air conditioned factory where temperatures reached in the triple digits in the summer. GM had salt tablet dispensers on the end of ever assembly line and still, what we called, the "Meat Wagon" the medical departments in plant ambulance, would pickup four or five workers per shift, who passed out, from heat exhaustion. We didn't work here because we liked these conditions; we did it to provide for our families and our future. In these actions by the Executive Branch, in this use of TARP our futures have been tom away, we have been violated by our own Government. The many thousands of non UA W GM workers, who have also worked for GM, get, much reduced pensions, or nothing, for these thirty plus years of hard labor. Only the U A W workers, who put up billions of dollars, get their pensions. [pg 19, A New Employees Beneficiary Association Trust (iii) (New VEBA") will own 17. 5% of New GM's ("New VEBA ")common stock on an undiluted basis. It also will own \$6.5 billion of New GM's Series A Preferred Stock, and a 6-year warrant to acquire 2.5% of New GM's common stock, with an exercise price based on \$75 billion total equity value money.)

The U.S. Treasury "gave" the UAW their pension rights. [pg 72,73 The Court fully realizes that UA W retirees will get a better result, after all is said and done, than Splinter Union Retirees will, but that is not by reason of any violation of

the Code or applicable case law. It is because as a matter of equity, the Purchaser needs a properly motivated workforce to enable New GM to succeed, requiring it to enter into satisfactory agreements with the UA W-which includes arrangements satisfactory to the UA W for UA W retirees. And the Purchaser is not similarly motivated, in triaging its expenditures, to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM.] It appears otherwise, the UA W clearly bought their pension rights, in this 363 Transaction if any other one, of the three Unions, "Splinter Unions as they are called in the July 5, 2009 Opinion, were to buy 10% or 20% of the New GM they also would have retained there pensions, and the collateral thereof. This is a double standard of application of Bankruptcy Law applied in this decision, of July 5, 2009 and therefore the Court must either takeaway the UAW's pension rights or gives the "Splinter Unions" there pension rights, or the collateral for those pension rights. The Law can not be bought, The U.S. Treasury, the "purchaser" can not pick and choose, its all or none. This sale of Old GM assets is in violation of the US. Bankruptcy Law and therefore the 363 Transaction and the decisions by the Honorable Robert E. Gerber approving this 363 Transaction are wrong, and must thereby in this U.S. District Court be found so.

The Fifth Amendment of the Constitution states in part: "nor shall private property be taken for public use, without just compensation." This has been violated by the oblique intention of the Executive Branch's use of TARP to force this 363 Transaction through a loan agreement signed December 31, 2008:

[pg9,10 (the "Treasury Pre petition Loan"), that provided GM up to \$13.4 billion in financing on a senior secured basis. Under that facility, GM immediately borrowed \$4 billion, followed by \$5.4 billion less than a month later, and the remaining \$4 billion on February 17, 2009. At the time this loan was made, GM was in very weak financial condition, and the loan was made under much better terms than could be obtained from any commercial lender-if any lender could have been found at all. But the Court has no doubt whatever, and finds, that the Treasury Pre petition Loan was intended to be, and was, a loan and not a contribution of equity. As contrasted with other TARP transactions that involved the US. Treasury making direct investments in troubled companies in return for common or preferred equity, the US. Treasury structured the Treasury Pre petition Loan as a loan with the only equity received by the US. Treasury being in the form of two warrants. The agreement had terms and covenants of a loan rather than an equity investment. The US. Treasury sought and received first liens on many assets, and second liens on other collateral. The transaction also had separate collateral documents. And the US. Treasury entered into intercreditor agreements with GM's other senior secured lenders in order to agree upon the secured lenders' respective pre petition priorities. The Court further finds, as a fact or mixed question of fact and law, looking at the totality of the circumstances, that there was nothing inequitable about the way the US. Treasury behaved in advancing these funds. Nor did the US. Treasury act inequitably to GM's creditors, who were assisted, and not injured, by the US. Treasury's efforts to keep GM alive and to forestall a liquidation of the company. GM had provided a business plan to Congress under which GM might restore itself to profitability, but it was widely perceived to be unsatisfactory. The US. Treasury required GM to submit a proposed business plan to demonstrate its future

competitiveness that went significantly farther than the one GM had submitted to Congress. As conditions to the US Treasury's willingness to provide financing, GM was

to:

(i) reduce its approximately \$27 billion in unsecured public debt by no less than two-thirds;

(ii) reduce its total compensation to US employees so that by no later than December 31, 2009, such compensation would be competitive with Nissan, Toyota, or Honda in the US;

(iii) eliminate compensation or benefits to employees who had been discharged, furloughed, or idled, other than customary severance pay;

(iv) apply, by December 31, 2009, work rules for US employees in a manner that would be competitive with the work rules for employees of Nissan, Toyota, or Honda in the US; and

(v) make at least half of the \$20 billion contribution that GM was obligated to make to a VEBA Trust for UA W retirees (" **VERA Trust**") in the form of common stock, rather than cash.]

GM at the time was losing \$2 billion a month. Who in there right mind, would give a company in these dire straights, a loan using taxpayer dollars unless, they had other motives? Many of these motives are clearly laid out in the above quote. GM who at this time is clearly unable to meet its financial obligations. Then the Treasury offered this loan of \$13.4 billion, if they sign the above contract. The contract demands payment (to unsecured public debt \$27 billion times 66% = \$17.8 billion, plus at least \$10 billion to VEBA plus making the payments on the \$13.4 billion loan) that totals \$21.3 billion, plus payments on the \$13.4 billion, an impossibility. Also the contract requires, and lowest common denominator wage and work rule requirements for U.S. manufacturing employees, the required free trade stipulations: the contract demands, free trade demands, that work rules, for U.S. employees to be competitive with the work rules of Nissan, Toyota, or Honda, and also contains more free trade demands that wages of U.S. employees be reduced, so as to be competitive with Nissan, Toyota, and Honda. In essence this contract demands wage controls which only the Legislative can approve, and work rules which only the Legislative can approve. Clearly the Executive Branch of government can not institute these changes without Congressional approval, and the contract did not have Legislative approval, therefore these demands in this contract financed by the taxpayer is clearly Unconstitutional. The Executive Branch using illegal T ARP money, under the guise savior of our economy, cannot make law that is clearly the Legislative Branch of government's responsibility, and only their responsibility

[pg 12] *What I'm talking about is using existing legal structure as a tool, with the backing of the U.S. government, can make it easier for General Motors ... to quickly clear away old debts that are weighing [it] down so that [it] can get back on [its] feet and onto a path to success;* clearly, President Obama was talking about the 363 Transaction. This is the Transaction, engineered by the Presidential Task Force on the Auto Industry (the Auto Task Force, [pg 24, *The Auto Task Force talked to dozens of experts, industry consultants, people who had observed General Motors for decades, management, and people who were well versed in the bankruptcy process as part of its planning and work on this matter.] And began by the use of the loan "LSA" also known as (the "Treasury Prepetition Loan"). This loan was signed by the U.S. Treasury and GM, December 31, 2008 this loan contained conditions that a very healthy Company could not meet, let alone a company that was losing \$2 billion a month. Only the U.S. Treasury, only, they, could make this loan, and only by utilization of these TARP funds. The oblique intent, of loan clearly was only to steer the automaker to this 363 Transaction, and thereby taking the private property of the retirees. The biggest liability of U. S. Treasury owned GM, is pension liability The U.S. Treasury would now be clear of much, of this pension liability, as the owner and controller, with controlling interest, owning 60% of GM, and the U.S. Treasury utilizing public money, taxpayer dollars, and the U.S. Treasury being an entity of the government, makes it public. Thus this is clearly violating the Fifth Amendment. This decision by the U.S. Treasury, to not pay mine and tens of thousands of retirees earned, accrued, pension, and, to sell off the collateral of my pension without any just compensation, is a serious violation of the Fifth Amendment and I want just payment as the Fifth Amendment demands. This violation of the Fifth Amendment, affects tens of thousands of U.S. citizens, and nothing stops the U.S. Treasury from future violations of the Fifth Amendment, by these intrusions into the private market. President Obama in his desire for Free Trade at any cost, is willing to subvert the Constitution, in gaining the goal, of chopping down the standard of living for 80% of U.S. Citizens, thus making a flat earth for wages. These free traders, who "roll" by another Constitution, not the U.S. Constitution, would think this a good thing.*

The birth of TARP was on September 19, 2008 when, then Secretary of the Treasury Henry Paulson proposed a three page document titled LEGISLATIVE PROPOSAL FOR TREASURY AUTHORITY TO PURCHASE MORTGAGE-RELATED ASSETS to the United States House of Representatives. In an open letter to Congress on September 24, over 100 economists expressed "great concern for the plan proposed by Treasury Secretary Paulson". Its authors described three "fatal pitfalls", its fairness, its ambiguity,

At this time late September 2008 no one, not any Congressman, any Senator, or even myself, could have ever imagined that this TARP money could and would be used by the U.S. Treasury to set a bankruptcy proceeding, for a private corporation. And that, the U.S. Treasury through a loan contract, would control wages, work rules take away and very certainly steer the company to a 363 Transaction, and the use of the law as a tool, would then tear away the Pensions of tens of thousands of U.S. citizens.

The U.S. voters; called, wrote, and emailed their representatives in the Legislative Branch of Government asking them not to vote for a \$700 billion bailout. The Congressional web site could not handle the volume, and crashed. I was one of the lobbyist and emailed and phoned, I saw the message on Congressional Web screen stating in part: we are experiencing difficulties at the current time because an unusually high volume please try again latter. I did try latter got my opinion in to the Legislature but was overruled by the 1%.

The original Paulson proposal then became H.R.3997. Which was rejected via a vote in the House of Representatives on September 29, 2008. Then became H.R.1424 (amended), and the House of Representatives voted on and approved it October 3, 2008. Then President Bush signed the bill into law within Hours of its enactment, creating a \$700 billion Troubled Assets Relief Program, this TARP Fund is codified at 12 U.S.C.5201.

This Tarp Fund money was used by the U.S. treasury in "designing" the 363 Transaction, in December 31, 2008, and the sale of General Motors Corporation and certain of its subsidiaries (together "GM"). The debtors moved for an order, pursuant to Section 363 of the Bankruptcy Code, approving GM's sale of the bulk assets (the "363 Transaction"), pursuant to a "Master sale and Purchase Agreement" and related documents (the MPA), to Vehicle Acquisitions Holding Company LLC (the Purchaser) ----a purchaser sponsored by the U.S. Department of the Treasury ("the U.S. Treasury")-free and clear of liens, claims, encumbrances, and other interests. The 363 transaction was approved by the Honorable Robert E. Gerber July 5, 2009.

performing OEMs in the U.S. market. I worked for GM for 30 years and have seen down cycles before. In 1973, (gas crisis), 1980 (20% interest rate), 1981 (10.8% unemployment and the beginning of bank deregulation), 1991 (tech market, Gulf War) 2001 (9-11), 2007 (banks, financial and insurance businesses, speculating with leverage).

Definition: A "Free Trader" is a person, who sees Free Trade as the ultimate good, and its importance supersedes any issues of sovereignty.

1). Where, in The **Bill of Rights** is it written, or implied that anyone of the Amendments is to have authority over or moot any other Amendment? It does not exist. But in the modern day United States it does exist and is very real. This violates the Constitution. The Judicial Branch can determine through the definition, of the one word "petition" and thus clarify of the **First Amendment**, eliminating this violation, and in this Appeal I ask for this clarification, thus stopping the rendering, ineffective other Amendments in The Bill Of Rights.

The TARP Fund, that setup the 363 Transaction, tore from me the collateral of my earned accrued pension, and the viability of my pension. The Purchaser, the U.S. Treasury refused to comply with Section 1114 and demanded the assets of my pension be sold, with no Lump Sum Payment to me for the Pension Liability. If the hired guns the paid lobbyist, were not dominating the democratic process the voices of U.S. voters in huge numbers saying NO, in their lobbying efforts through letters emails and phone calls to this TARP would have been heard, but, the paid lobbyist muffled the U.S. voters lobby attempts, and it was passed.

This recession/depression, put and already struggling GM in dire straits.

Free trade and all its “Free” trade agreements had undermined American manufacturers and thus wages and benefits of these workers became a big issue. GM Workers and in my case retiree, fall victim of these “Free Traders.” They dominate the representation of our government through Unconstitutional lobbying tactics. Having a high position in Government such as a Senator, Congressman, high ranking military Officer, or many other “connected” government jobs, appear to be nothing more than internships for a job, later in industry, or as a lobbyist. Even in a candy bar contest, there are better stipulations, (who can enter is clearly printed on the wrapper), than there are protections for our Constitutional Government from these paid lobbyist. The **First Amendment** allows: “for a right to Petition the Government for a redress of grievances”. But the Constitution never intended for a paid system of petitioning/ lobbying which dominates and skews fair representation, thus making moot, the **Fifteenth Amendment Section I and Section II, Nineteenth Amendment and Twenty Fourth Amendments** . Ninety percent of the responses, to this TARP vote were negative, from calls, emails (crashing their Web site due to volume), and letters, to Congress, but still, who was represented? For the lower 80% of income in the United States, the only realistic method of lobbying is by letter, phone, and email. They can not afford to go to Washington, and can’t afford to take the time off from work if they have a job, to lobby their representative, in Washington. So, when the 1 % of the citizens with the highest income, and thus able to

If you vote, your vote must mean something; it can not just be an empty action, in which, once real legislature come up, and this legislation directly effects you and your family, these paid lobbyists come in dominate the process, so only they are heard. That is unconstitutional and it must be declared so, to save our Democracy. On the other hand any US. citizen who so desires to petition the Government certainly has that right, it is all our rights, but this right can not abuse others rights in so doing, thus nullifying their right to petition the government. In The Bill of Rights each are separate, individual rights, one was not to trample on the other. If you have the right to vote and do so, it follows that your vote should mean something, and should not be erased at a later stage in our representative form of government, behind closed doors by the use of paid lobbyist. If paid lobbyist had been made Unconstitutional a few years ago, this TARP would never have passed. The people would have been heard, as they must.

President Clinton in his tenure, pushed thru Congress, NAFTA, 80% of U.S. voters were against it, and, pushed thru GATT, again 80% of U.S. citizens were against it. Next, President Bush pushed thru several Trade bills. See chart **Exhibit: C pg 9 figure 5**. This chart shows why 80% of U.S. voters are against these "Free" Trade agreements. If you are in the 1 % of the highest income bracket in America, you can afford, and it will be beneficial to you, to hire one, or hundreds of lobbyist to dominate the "representative" government, to fit your needs. This is clearly unconstitutional.

be time for the Judicial Branch to define a Petitioner. First a petitioner can not be paid, he would be, a professional lobbyist, and would be in violation of rendering useless the **Fifteenth Amendment, Nineteenth Amendment, and Twenty Fourth Amendments** to the Constitution. Secondly, individuals cannot use paid lobbyist for personal gain and Thirdly Corporations, can not be allowed to dominate the political system through there lobbying efforts with paid lobbyist and thus moot the people, the voters. If allowed, a small group of Americans can thus dominate the Government thru well connected (former chiefs of staff, congressman, senators, professional lobbyist, ect.) and yield the Government to dominate their position over the democratic majority. This TARP is a prime example, 90% of the lobbying efforts by citizens were to no avail the paid lobbyist were heard. The **First Amendment** does not say "you have the right to pay as many well-placed petitioners as you can afford, for a redress of grievances, and thus subvert the majority," as it should not, but that is what is happening in the United States today. Paid petitioners or lobbyist present a clear and present danger to our Democracy, this is very clear, and it must be ended.

Who are this small group of people who wanted TARP, what was it used for, who were the winners and losers, of its use, and what was the over sight of its use, that define its purpose.

1). TARP was brought to the House of Representatives September 20, 2008, by then Secretary of the Treasury Henry Paulson. He presented a three page document **Exhibit Z21 pg2** under (Section 8. Review) it states: "Decisions by the Secretary pursuant to the authority of this Act are non reviewable and committed to agency discretion, and may not be viewed by any court of law or any administrative agency".

How could anyone, who believes in U.S. Constitution, present a proposal to the U. S. Congress, thus insulting the very foundation of the United States? These Free Traders "roll" by another Constitution.

2) Secretary Paulson's former job was CEO of Goldman Sacs. In 2006 he was appointed to Treasurer by former President Bush. TARP was approved, as previously stated. By the results of T ARP' S use, it is clear that the only "enforcement" of TARP by the Legislative Branch is a "Congressional Oversight Panel." In Exhibit Z18 pg3 Elizabeth Warren in an interview April 12, 2009 stated: I don't have a badge and a gun. The power of this panel is derived entirely from the voice of the American people. If they stay out of the policy debates, then the Treasury can spend at will and reshape the American economy with no one in the room but inside

(i) The U.S. citizens have attempted several times to be part of the debate, but were shown the door. This occurred in the vote on NAFTA, GATT, TARP and many more occurrences of Free Traders dominating what should be a democratic process. Clearly, the Free Traders would have great difficulty convincing U.S. citizens that a lower standard of living for them is something to be desired. So the lobbyist and "special interests" step in with their demands for this "Free" trade and dominate the proceeding. This is not the Democracy the U.S. Constitution defines.

3) Treasury Secretary Paulson received this TARP money. He originally stated he would use the TARP Fund for buying up mortgage-related assets. But instead he called a meeting NYC with the leaders of several huge banks. The public was told they could not leave the meeting until they agreed to sign a paper that gave the bankers 10's of billions of U.S. taxpayer dollars, as the public found out later. I wondered as I watched on the news cast why a group of them leaving, were laughing on such a somber occasion. Tens of Billions of these taxpayer dollars went to his former employer, Goldman Sacs.

(i) President Obama was elected in November 2008. President Bush and President Obama agreed to ask Congress to release the other half of TARP over \$300billion of it was already gone and president Obama wanted to get his people Timothy Geithner (who became secretary of the treasury) and Larry Summers involved with the TARP.

4) Up to this point, December, 2008, 50% of the TARP Funds over \$500 billion the U.S. taxpayer obligations to pay back were given as equity to banks, financial firms, and insurance firms. None went to mortgage-related assets, it was reported at the time that speculation by these firms, mainly in the form of Credit Default Swaps and other speculative, leveraged mortgage instruments, was the problem. No Regulation or Law addressing these abuses by these firms, have been enacted. Most all of the persons making the key decisions on the use of this TARP Fund money have close ties with Banks, Wall Street, the Federal Reserve Board, in some cases actual firms that received money. These are the Global "Free" trade A-team players. The biggest winners were these banks, finance, in insurance and mortgage lending firms. The biggest losers were the U.S. voter. A democracy can not work if the peoples vote is made moot by lobbyist.

TARP, was intended to be used to buy troubled assets of financial institutions 12 D.S.Co 5211(A) (1). Which is defined as: "any institution, including not limited to, any bank, saving association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any state or territory or possession of the United States ... and having significant operations in the United States but excluding any central bank of any foreign government." 12 U\$.C. 5202(5), 5211(a).

The following are constitutional violations concerning TARP.

1). The TARP bill being put into law at the request of the Executive Branch, giving the Executive Branch sole power over its use and thus the purse of the peoples Branch, in a massive amount of money, equaling almost 5% of the United States gross domestic production. This TARP is Unconstitutional, it violates the Separation of Power that our Constitution demands, to function without the threat of tyranny. See Exhibit (s) Z 23, 16, 17. The then President George Bush, in December 2008, allows the use of TARP money for automakers. Thus in this act overriding the Legislature, (this money was approved only for financial Institutions). Also the Legislature did not approve its own funding of a \$14 billion bailout for auto makers, Exhibit Z16. Therefore, President Bush encroached on the legislative Branch. He made law that took money out of the treasury. This is authority the Executive Branch clearly does not have; this authority only under the U.S. Constitution is executed by the Legislative Branch. The principle of Separation of Powers says each branch of government should be confined to its own role: the Legislature makes Laws; the Executive executes laws; and the Judiciary interprets the laws. Separation of power is partly about constraining government. Accumulation of all powers into one branch, the framers warned, is the very definition of tyranny. Accordingly, separating powers checks tyranny. This TARP money violates this principle, and therefore is Unconstitutional.

2). No firm Checks and Balances exist in the use of this TARP, just oversight by the Legislative Branch. **Exhibit Z18.** The principle of Checks and Balances says the Constitution, prevents overreaching by one branch through the checking of the others. The use of this TARP is controlled by only the Executive Branch, and the Tarp has only "oversight" by the Legislative Branch, the Legislative Branch, has no authority, only opened the purse of the people to the Executive Branch in this bill. The Legislative Branch cannot say how or where the money will be spent it says only that the money will be used for Financial institutions. **Exhibit Z 17** The only concrete difference between this T ARP from the original three page proposal concerning checks and balances t **Exhibit Z 21** is the allowance for Judicial review. That is fundamental, but so are Checks and Balances blocking abuses, ambition countering ambition, in James Madison's phrase. This TARP from its very inception was clearly, not designed for Checks and Balances and is Unconstitutional.

3). **ARTICLE I, SECTION 7.** "All Bills raising Revenue shall originate in the House of Representatives." When president Bush "approved" the use of Tarp Funds for automakers, and then allowed there use, he clearly violated the Constitution, and when President Obama followed thru on the use of these Funds to control wages, work rules, and use the Law as a tool to takeaway pensions of workers, retirees, and citizens, without Legislative approval he also violated the Constitution. President(s) Bush and Obama are not the House of Representatives. These are violent encroachments on the Legislative Branch this ends in the abuse its own U.S. citizens. These abuses by the Executive Branch violate the U.S. Constitution, and would not happen if this TARP money was not used for automakers, The T ARP has been used unconstitutionally for automakers.

4) **Article I, Section 8.** "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States,". This tarp was not necessary; the United States throughout its history has gone through many severe downturns. Never before has the Legislature rewarded 5% of the Nations GDP to the perpetrators. They became the beneficiaries of this bubble and downturn. **Exhibit W.** The best cure for these downturns appears to be, if history is any lesson, to let the losers lose, the sooner, that is done, the sooner the recovery. This TARP rewards the losers with taxpayer money, and is not constitutional, by any definition. Where in **Section 8**, does the Constitution allow or state the Legislature can establish a fund that takes huge sums of money out of the Treasury, to be used without interference by the Legislature and is to be used at the sole discretion of the treasury, in the bailing out of unscrupulous bankers, financial firms, mortgage companies and insurance companies, and this money may be used to pay themselves billions in bonuses, out of these taxpayer dollars, and this will be done without requiring, answering to the citizens as to how this money will be spent. It may be used to manipulate a sale of any private business so as to conform the U.S. worker to wage, work rule constraints, and take away pensions as desired, thus conforming these U.S. employees to the Free trade standards the Executive Branch desires. I certainly do not believe, in any way, the U.S. Constitution is a laughing matter but to call this TARP Constitutional would be.

5). Article I Section 9 "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time" Exhibit Z 2, Z 17
 There is no public accounting or receipts of how the U.S .taxpayers money was spent by the Treasury. A full accounting must be given in a timely fashion, at the very least, once per week, a Statement of Account of Receipts and expenditures must be made to the public.

6). AMENDMENT V. "nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation". In this sale, the 363 Transaction, the U.S. Treasury is purchasing New GM with T ARP Money; this T ARP money was first used in a LSA loan on December 31, 2008 that setup the 363 Transaction for Bankruptcy Court. The sale requires that Old GM be sold off. The Purchaser (U.S. Treasury) requires Old GM be sold off and refuses to comply with

Section 1114 that would secure pensions for all GM pensioners. Therefore this sale takes away my pension, or greatly reduces it, at the same time takes away the collateral of my pension, which is in Old GM. Thus the purchaser (the U.S. Treasury) will own New GM, the treasury, has controlling interest, owns over 60%; therefore, the Old GM Has been taken for public use. The Treasury clearly has controlling interest, and refuses to comply with Section 1114, and insists on selling off the collateral of my pension. They are violating the Fifth Amendment by not paying me and tens of thousands of others just compensation, for the loss of pension. see Exhibit(s) R, I, K, H, M, F, J, L, and Z: 4,5,6,7, Also in the future I will be denied any use of U.S.C. Title 29 Subtitle D 1364, 1369, 1363, 1367, 1362, Subtitle C 1341 AND Subtitle B Part 21054. The collateral of my pension will be gone, rendering any recovery under these codes or other U.S.C. moot. Therefore, I ask that I be paid a lump sum as I requested in my original Objection.

7). The First Amendment of the Constitution states in part: "to petition the Government for a redress of grievances." Currently, through, the modern day extensive use, by individuals, and corporations, of paid lobbyist (petitioners), our Constitution our Democracy is threatened. These individuals, and Corporations dominate the representation, they buy it. These paid lobbyist present a clear and present danger to U.S. Democracy. The use of these paid in many cases professional lobbyist nullifies the will of the people. See above examples of U.S. citizens lobbying through letters, emails and by phone clearly against the free trade agreements, and TARP, but they are made moot by the paid lobbyist hired guns. The corporations and individuals who hire these lobbyists are in the top one percent income bracket, but they help write and push through almost any legislation they desire. This Tarp is a good example of this, citizens came out as never before lobbying by phone, email, and letters, but their voices were muffled by the paid lobbyist. The Judicial Branch has the obligation to uphold the Constitution therefore paid lobbyist (paid petitioners) must be overruled, the word petition must be defined so as to allow the intent of all Amendments to be "heard"
 Treasury Secretary Paulson who was in charge of and decider of the use of the TARP Fund spoke to the Congressional House Financial Services Committee in November 2008:

The purpose is stabilizing and strengthening our Financial system, and I have said to you very clearly that I believe that the Auto Companies fall outside of that purpose.

Oversight of implementation of the Emergency Stabilization Act of 2008 and of government lending and insurance facilities; impact on economy and credit availability; Hearing before the H. Comm. on Fin. Servs. 110th Congo 19 (Nov 18, 2008) Exhibit Z 10 The declaration of Todd A. Gluckman in support of the motion to withdraw the Reference (Gluckman Decl.) Exhibit Z 10 The Declaration of Todd A. Gluckman in support of the motion to withdraw the reference (GLUCKMAN DECL.)

On December 11, 2008 the house failed to pass legislation that would have allowed a bailout for the Automakers.

Then President George Bush, on December 19, 2008 Exhibit Z 16 stepped in and under his authority only, "overruled" the House of Representatives decision to not approve a bailout for automakers, Gluckman Decl. and allowed T ARP money to be used for the used unlawfully for the automakers. This encompasses all seven of the above Constitutional violations. Exhibit A.

In a press conference December 12, 2008, Treasury spokeswoman Brookly McLaughlin stated: "because Congress failed to act, we will stand ready to prevent an imminent failure until congress reconvenes and acts to address the long-term viability of the industry".

Congress already acted on December 11, 2008 they rejected the idea of a bailout for automakers. They reconvened, and still have not, did not pass any Legislation approving TARP for use on the automakers, or any bailout. This statement by the Treasury underlines what it thinks its authority is. And the authority the Treasury talks about is not of the U.S. Constitution. TARP is being dictatorially implemented by just one branch of government the Executive Branch. The Constitution is thus being violated. Gluckman Decl. Exhibit A

Treasury Secretary Paulson on December 19, 2008 reverses his above stated. very statement, now to the opposite determination. (**Gluckman Decl.**) He now says the automakers: are "Financial Institutions" for the purposes of Section 3(5) of the Act as they are "Institution(s)" established and regulated under the Laws of the United States and

have significant operations in the United States". This statement could be used to authorize TARP for use in Walmart, or McDonald's. This sale using TARP puts money puts our Republic under the Constitution in grave danger and it cannot stand.

New Treasury Secretary Timothy F. Geithner on April 29, 2009 avoiding the word "Financial" used another determination that automotive companies are "Institutions" under TARP and that therefore their troubled assets were eligible to be purchased under TARP. Gluckman Decl. Now, it follows, that the Treasury can purchase, Walmart or McDonald's. This purchase of U.S. Institutions, at the Treasury's determination with taxpayer money, is Unconstitutional We are today at the cross roads; one, the free trader road that leads to tyranny of economics benefiting the few, and the other road, is the road this country has almost always traveled the road to freedom of economics through fair trade policy, and no wage, work rule controls, the pull yourself up by your boot straps road. This TARP is not of the Constitution and is now steering us down the road to tyranny of economics.

The solution offered by the Purchaser (the U.S. Treasury) was the worst offer of all demanding wage cuts, benefit cuts, work rule changes and pension liability elimination, for tens of thousands of retirees erased, (complying with the Executive Branches Free Trade policy) with no promise of success, an "all in" gamble, sacrificing the U.S. Workers. Instead of the TARP use and all of its negative and Unconstitutional violations, the Government could have worked together to design a Government Contract. Instead of using TARP money (without Congressional approval), the Government could have/ should have offered a Government contract, with Congressional approval. To forward purchase for example; 2,000,000 electric vehicles with the "green requirements" they so desire, such as 75 to 100 miles per plug in. This contract with Congressional approval, and with Checks and Balances would be not unlike a defense contract, to be filled in x number of years, The U.S. Government would pre pay for some of the cost, allowing the Old GM, immediate cash, to sustain them through this downturn. These vehicles would be supplying the Post Office and all other non security related Government agencies, the GM stock would have rocketed up, leading to many other financial pluses. If this were done, and it still can be if this sale is stopped, then almost every party would win; the taxpayer would get something for their money, Old GM would be stabilized and on the road to recovery, and the workers and retirees would not be harmed by illegal Government actions. The only loser would have been the Free Traders (the 1 % of highest income earners) The Government should lead by example in its desire for a "greener America." This electric car would quickly trickle down and be utilized by, state and local Governments. The question becomes why it wasn't done. The free traders wanted to level the wage and benefits; they wanted a flat earth for these benefits and wages. This is Unconstitutional and probably criminal. The same time that manufacturing workers were getting their wages, work rules, and in my case my pension destroyed, the billions in bonuses keep going to the Wall Street free traders utilizing taxpayer dollars.

Also I am not, or ever have been, a member of the UAW. I would not let a Union represent me in these proceedings. I am filing Pro Se, and I ask the Court to; please hold me to less stringent standards than formal pleadings drafted by lawyers.

After working for 30 years to earn my pension rights from GM, along comes the U.S. Treasury and takes it away by the manner of using Law as a tool and, forcing a 363 Transaction through the use of taxpayer TARP money, and in its wake leaving charred remnants of the Constitution.

I ask that this Appeal be passed directly to the United States Court of Appeals.

Respectfully

A handwritten signature in cursive script that reads "Albert L. Benedict". The signature is written in black ink and is positioned in the center of the page.

Footnote:

I am filing this Pro Se and thus not familiar with many proceedings. I received a copy of a letter from: Weil, Gotshal & Manges LLP to: Mr J McMahon. It suggests the all Appeals in this matter are similar and should be heard by the same District Judge. My appeal is of very serious Constitutional matters and should not be "grouped together" so as to conserve judicial resources. And I request that this proposal dated August 5, 2009 be denied.